

U.S. Department of Justice



United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219

412/644-3500

February 10, 2009

Michael J. Novara
Assistant Federal Public Defender
1450 Liberty Center
1001 Liberty Avenue
Pittsburgh, Pennsylvania 15222-3714

Re: United States of America v. Joseph Simon
Criminal No. 07-94

Dear Mr. Novara:

This letter sets forth the agreement by which your client, Joseph Simon, will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement between Joseph Simon and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Joseph Simon will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

A. The defendant, Joseph Simon, agrees to the following:

1. He will enter a plea of guilty to Count 1 of the Indictment at Criminal No. 07-94, charging him with violating Title 18, United States Code, Section 2422(a), pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

2. He will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664, to the victims and/or other persons or parties authorized by law in such amounts, at such times, and according to such terms as the Court shall direct.
3. If the Court imposes a fine or restitution as part of a sentence of incarceration, Joseph Simon agrees to participate in the United States Bureau of Prisons' Inmate Financial Responsibility Program, through which 50% of his prison salary will be applied to pay the fine or restitution.
4. At the time Joseph Simon enters his plea of guilty, he will deposit a special assessment of \$100.00 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
5. To the extent required by 18 U.S.C. §§3563(a)(8) and 3583(d), and the Sex Offender Registration and Notification Act (SORNA, 42 U.S.C. §16901 et seq.), Joseph Simon agrees to report the address where he will reside and any subsequent change of residence to the probation officer responsible for his supervision, and further agrees to register as a convicted sex offender under the law of any state in which he resides, is employed, carries on a vocation, or is a student.
6. Joseph Simon waives any former jeopardy or double jeopardy claims he may have in or as a result of any related civil or administrative actions.
7. Joseph Simon waives the right to take a direct appeal from his conviction or sentence under 28 U.S.C. §1291 or 18 U.S.C. §3742, subject to the following exceptions:
 - (a) If the United States appeals from the sentence, Joseph Simon may take a direct appeal from the sentence.
 - (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the

sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Joseph Simon may take a direct appeal from the sentence.

Joseph Simon further waives the right to file a motion to vacate sentence, under 28 U.S.C. §2255, attacking his conviction or sentence, and the right to file any other collateral proceeding attacking his conviction or sentence.

B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. The United States Attorney retains the right of allocution at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Joseph Simon in the offense charged in the Indictment and of any other matters relevant to the imposition of a fair and just sentence.
2. Prior to sentencing, the United States Attorney will, orally or in writing, move that, pursuant to §3E1.1 of the Sentencing Guidelines, the Court reduce the offense level by 3 levels for acceptance of responsibility, on the grounds that the offense level prior to application of §3E1.1 is 16 or greater, and Joseph Simon timely notified authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.
3. The United States Attorney will take any position she deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Joseph Simon and the United States Attorney further understand and agree to the following:

1. The penalty that may be imposed upon Joseph Simon is:

- (a) A term of imprisonment of not more than twenty (20) years;
- (b) A fine of \$250,000.00;
- (c) A term of supervised release of not less than five (5) years to life;
- (d) A special assessment under 18 U.S.C. §3013 of \$100.00;
- (e) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.

2. The Court shall determine the victims and/or other persons or parties who will receive restitution as authorized by law.

3. The parties stipulate that the section of the guidelines to be applied in this case shall be §2A3.2, Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years. The parties further stipulate that the base offense level shall be enhanced by 4 levels pursuant to §2A3.2(b)(2)(ii), because the defendant otherwise unduly influenced the minor to engage in prohibited sexual conduct. Thus, prior to a 3-level reduction in the offense level for acceptance of responsibility (§3E1.1), the parties agree that Mr. Simon's total offense level under §2A3.2 shall be 22. Both parties agree not to seek additional departures or variances from Joseph Simon's guideline range. This stipulation includes all relevant conduct, under §1B1.3 of the Guidelines, and represents the parties' best understanding on the basis of the information available as of the date of this agreement. The stipulation is not binding upon the Court and does not preclude the parties from bringing to the attention of the United States Probation Office or the Court any information not within their knowledge at the time this agreement is executed.

4. This agreement does not preclude the government from pursuing any civil or administrative remedies against Joseph Simon or his property.

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This letter sets forth the full and complete terms and conditions of the agreement between Joseph Simon and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,



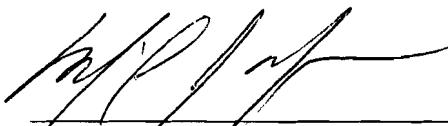
MARY BETH BUCHANAN
United States Attorney

I have received this letter from my attorney, Michael J. Novara, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.


JOSEPH SIMON

3-12-09
Date

Witnessed by:


MICHAEL J. NOVARA, ESQUIRE
Counsel for Joseph Simon